

REMARKS

The applicant acknowledges the Office Action of 21 March 2008 with appreciation. Claims 11 through 23 remain under consideration. The Office acknowledges the perfected basis under 35 USC § 371 in the copending PCT international application no. PCT/FR03/00200 of 22 January 2003.

Acknowledgement of the priority claim to French Application No. 02 00790 of 23 January 2002 under 35 USC § 119, which priority claim was made and perfected by the filing of a certified copy of the priority document and certified translation thereof at the time of the filing of the instant application, is respectfully solicited.

Claim 16 is rejected for lack of written description and enablement under 35 USC § 112, first and second paragraphs, respectively. It is the position of the Office that Claim 16 lacks written description for flow agents generally and that Claim 16 lacks enablement for lubricants. The Office acknowledges the specificational disclosure of colloidal silica as a flow agent. Moreover, the Office notes the disclosure in the cited US Patent No. 7,201,922 of magnesium stearate as lubricant. The applicant consequently relies on the fact that these substances and their function in pharmaceutical compositions are well known in the art and that the Specification comprises adequate written description of flow agents, generally, and enablement of lubricants, specifically.

All claims are rejected under 35 USC § 103(a) for obviousness based on the disclosure of Serpelloni (US Patent No. 7,201,922, filed 11 June 2002, claiming the benefit of French priority application no. 02 00647 of 18 January 2002, which US application first published 7 August 2003 under publication no. US 2003 0147947). The instant application claims priority to French application no. 02 00790, filed 23 January 2002. Consequently, the cited art which was published 7 August 2003, i.e., after the priority of the instant application, may qualify as prior art only under 35 USC § 102 (e), (f) or (g). The Office acknowledges that the

instant rejection is not based on lack of novelty under 35 USC § 102 because the cited art does not disclose "the specific use of perindopril, as active agent..."

With the instant response, the applicant invokes the provisions of the CREATE Act of 2004, disqualifying the cited art under 35 USC § 103(c). The applicant submits that the "claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made." See 35 USC § 103(c)(2)(A). With the instant response, the applicant amends the Specification to disclose that "The instant invention was made by or on behalf of parties to a joint research agreement which came into effect 21 December 2001 between LES LABORATOIRES SERVIER and ROQUETTE FRERES", in accord with 37 CFR § 1.71(g)(1). The applicant submits the appropriate processing fee set forth in 37 CFR § 1.17(i), herewith. Moreover, the applicant affirms under 37 CFR § 1.104(c)(4) the foregoing fact that the instant invention was made by or on behalf of parties to a joint research agreement within the meaning of 35 USC § 103(c), that such agreement was in effect on or before the date the claimed invention was made in accord with 37 CFR § 1.104(c)(4)(i)(A), and that the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement in accord with 37 CFR § 1.104(c)(4)(i)(B). As a result, the applicant solicits the disqualification of the cited art under 35 USC § 103(c).

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Accordingly, entry of the present amendment, reconsideration of all grounds of objection and rejection, withdrawal thereof, and passage of this application to issue are all hereby respectfully solicited.


It should be apparent that the undersigned attorney has made an earnest effort to place this application into condition for immediate allowance. If he can be of assistance to the Examiner in the elimination of any possibly-outstanding insignificant impediment to an immediate allowance, the Examiner is respectfully

invited to call him at his below-listed number for such purpose.

Allowance is solicited.

Respectfully submitted,

THE FIRM OF HUESCHEN AND SAGE

By: 
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Enclosure: Return Postal Card Receipt,
Extension fee of \$1050.00 for three (3) month extension (Check
No. 76530), and
Processing fee of \$130.00 for amending the Specification to
reference parties to a joint research agreement (Check No. 76531)

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**THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY
FURTHER OR ADDITIONAL FEES WHICH MAY BE REQUIRED (DUE TO
OMISSION, DEFICIENCY, OR OTHERWISE), OR TO CREDIT ANY
OVERPAYMENT, TO DEPOSIT ACCOUNT NO. 08,3220.**